

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Empowering Consumers to Prevent and)	CG Docket No. 11-116
Detect Billing for Unauthorized Charges)	
("Cramming"))	
)	
Consumer Information and Disclosure)	CG Docket No. 09-158
)	
Truth-in-Billing and Billing Format.)	CC Docket No. 98-170

COMMENTS OF PREFERRED LONG DISTANCE, INC.

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Preferred Long Distance, Inc. ("PLD") submits these comments in response to the Notice of Proposed Rulemaking in the above dockets.¹

INTRODUCTION

PLD entered the market in California as an interexchange carrier nearly two decades ago and, since then, has expanded its operations to include the provision of local exchange and interexchange services in a number of states. PLD provides interexchange service on a presubscribed, 1+ basis to small- and medium-size commercial customers. PLD does not provide casual calling, dial-around service.

PLD bills for interexchange service through direct invoices to its customers and, also, through third-party billing arrangements with incumbent local exchange carriers ("LEC-billing"). For PLD, LEC-billing is significantly more expensive than direct billing. However, a

¹ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, CG Docket No. 11-116, *Consumer Information and Disclosure*, CG Docket No. 09-158, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Notice of Proposed

substantial number of customers, 60% in PLD's experience, demand a single invoice for all of their telecommunications services. In such cases, where PLD is not the customer's local exchange carrier, PLD must provide the customer with the option of LEC-billing, or it will lose that customer.

Thus, while the use of LEC-billing is not PLD's first choice, it is a choice that a majority of customers absolutely demand. Accordingly, proposals that would impair the ability of presubscribed interexchange carriers to utilize third-party billing arrangements would not only harm carriers such as PLD, but, more importantly, would deny customers who want and demand a single telecommunications invoice the full spectrum of competitive choices they enjoy today.

A. IMPOSING OR PERMITTING THE BLOCKING OF LEC-BILLING FOR PRESUBSCRIBED 1+ INTEREXCHANGE SERVICES WOULD INTERFERE WITH CONSUMER CHOICE, WOULD BE ANTI-COMPETITIVE, AND IS ENTIRELY UNNECESSARY

No comments submitted in these dockets, to date, demonstrate that the public interest would be well-served by depriving customers of the option to be invoiced for stand-alone, presubscribed 1+ interexchange service on their LEC bills. Therefore, the Commission should dismiss out of hand any proposal that would prohibit third-party billing of charges for presubscribed 1+ interexchange service. But, the Commission should also be wary of, and reject, less drastic proposals that may have unintended anti-competitive consequences, such as opt-in requirements, or even opt-out options, for third-party billing of presubscribed 1+ interexchange service.

ILECs and other LECs currently have the option of providing customers with the ability to freeze their preferred carrier selections. So-called PIC freezes allow customers to ensure that no changes can be made in their choices of presubscribed interexchange carriers

Rulemaking, FCC 11-106 (rel. July 12, 2011) ("NOPR").

without the customers' communicating consent directly to their local exchange carriers. Thus, with a PIC-freeze in place, the only third-party-billed charges for presubscribed 1+ interexchange services the customer will ever see will be those from the customer's authorized PIC. Adding another layer of protection, in the form of third-party-billing opt-in requirements or opt-out options, is clearly unnecessary.

Moreover, like PIC freezes, opt-out options and, most-certainly, opt-in requirements are inherently anti-competitive and should not be permitted, much less mandated, at least without clear safeguards in place to ensure that they do not present untoward impediments to effective competition or provide opportunities for unfair competition by billing LECs.²

As in the case of lifting PIC freezes, third-party-billing opt-in processes or opt-out removal processes would require customers personally to take extra steps to effect changes in their preferred interexchange service providers. As the Commission has noted, when customers with PIC freezes fail, because of confusion or onerous processes, to take the extra step of contacting their LECs to lift the freezes in order to effect changes in their preferred carrier selections, the PIC selection process is frustrated.³ The same would be true if customers were required to contact their LECs to opt in to third-party billing or remove prior opt-out elections.

² Even with safeguards in place, however, the potential for unfair, anti-competitive behavior will likely remain. For example, Preferred has encountered numerous instances of customers being confronted with concerted winback efforts during calls to their serving LECs to lift PIC freezes, including offers of special rate incentives on behalf of the LECs' long distance affiliates and derogatory comments concerning the customers' newly-selected PIC. There is no reason to believe that LECs will be any more respectful of customers' decisions regarding related third-party billing elections.

Of course, where a customer has a PIC freeze in place, adding a third-party-billing opt-in or opt-out removal process to the carrier selection procedure would be doubly confusing and burdensome.

What is more, with LECs and ILECs having the ability to compete against providers of stand-alone presubscribed interexchange services, LECs and ILECs could have incentives to use third-party-billing opt-in and opt-out procedures to lock-out competitors or to unfairly advantage themselves, their affiliates, or other favored interexchange service providers.⁴ Indeed, requiring customers to contact their LECs in order to opt in to third-party billing or to lift a third-party-billing opt-out selection is no different from requiring them to lift PIC freezes and hardly different from allowing LECs to re-verify PIC selections.⁵

In PLD's view, there is no good reason for the Commission to impose or permit third-party-billing opt-in or opt-out options in connection with presubscribed interexchange carrier selection.⁶ Federal and state rules against unauthorized changes in preferred carriers (i.e., "slamming") together with existing truth-in-billing rules effectively address the very same types of harms to presubscribed interexchange service customers that proposed limitations on third-

³ *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, (rel. December 23, 1998) ("Second Report and Order"), ¶ 114.

⁴ *See, id.*, ¶ 116 ("[I]ncumbent LECs may have incentives to market preferred carrier freezes aggressively to their customers and to use different standards for placing and removing freezes depending on the identity of the subscriber's carrier.")

⁵ *See, id.*, ¶ 99, rejecting PIC re-verification as providing LECs with "both the incentive and ability to delay or deny carrier changes, using verification as an excuse, in order to benefit themselves or their affiliates."

⁶ PLD is unaware of any LECs that currently offers opt-out options in connection with billing for third-party presubscribed interexchange services. In PLD's view, their doing so would interfere with the Commission's carrier selection policies and, therefore, would be unlawful in the

party billing might prevent. While slamming does occur on occasion, it is not as widespread or extensive as it was prior to the adoption of strict enforcement regimes at the state and federal levels. Moreover, when it does happen, it is readily detectable and is easily remedied.⁷ Thus, burdensome opt-in or opt-out procedures are simply not needed to protect consumers.

B. IF THE COMMISSION CHOOSES TO REQUIRE OR ALLOW LECs TO OFFER OPT-IN OR OPT-OUT PROCESSES FOR BILLING OF PRESUBSCRIBED 1+ INTEREXCHANGE SERVICE CHARGES, STRICT SAFEGUARDS MUST BE ADOPTED TO PRESERVE CONSUMER CHOICE AND PROTECT AGAINST ANTI-COMPETITIVE ABUSE

Should the Commission determine that third-party-billing opt-in requirements or opt-out options may or should be offered to consumers on top of the verification rules that are already in place, the Commission must adopt and require strict compliance with rules designed to prevent anti-competitive conduct or other abuses that would unduly interfere with interexchange carrier selection.⁸

PLD submits that because of the similarity between PIC freezes and third-party-billing opt-in and opt-out options, in terms of their anti-competitive impacts and potential for

absence of specific Commission authorization.

⁷ PLD believes that slamming, today, is unintentional in most cases. The advent of strict liability for violations of verification rules, automatic revenue disgorgement requirements, and the potential for heavy fines, along with truth-in-billing requirements and ever-vigilant competitors, eliminates slamming as an effective business strategy.

⁸ The Commission is clearly authorized to adopt such rules, as opt-in or opt-out lifting processes, like PIC freezes, require consumers to take extra steps and may frustrate the Commission's PIC selection procedures: "Preferred carrier freezes directly impact the verification procedures which Congress instructed the Commission to adopt because they require subscribers to take additional steps beyond those described in the Commission's verification rules to effectuate a carrier change. Moreover, where a preferred carrier freeze is in place, a submitting carrier that complies with our verification rules may find that its otherwise valid carrier change order is rejected by the LEC administering the freeze program. Since preferred carrier freeze mechanisms can essentially frustrate the Commission's statutorily authorized procedures for effectuating carrier changes, we conclude that the Commission has authority to set standards for the use of preferred carrier freeze mechanisms. *Id.* at ¶ 117.

abuse, the same types of requirements governing PIC freezes set forth in Rule 64.1190, 47 C.F.R. § 64.1190, should apply to third-party-billing opt-in and opt-out processes for presubscribed interexchange services.

Thus, as an over-arching principle, such options should be implemented on a neutral, nondiscriminatory basis. Specifically, any opt-in requirements and the availability of any opt-out options and related procedures should apply equally to LECs' billing for their interexchange carrier affiliates and their billing for independent interexchange service providers. Further, the election process and other applicable procedures should be the same for all subscribers, regardless of their PIC selections. In addition, in any related solicitations or communications, LECs should be required to provide clear explanations of the options and their potential effects on future interexchange carrier selections, including the potential need for customers to undertake duplicative processes to change carriers. LECs should also be required to verify customers' elections to opt in to or opt out of third-party billing for presubscribed interexchange services in accordance with the PIC freeze verification requirements and should be required to honor customers' opt-out removal decisions in the same manner as decisions to lift PIC freezes.

Finally, PLD believes that it would be vitally important for the Commission to explicitly confirm that a customer's decision to opt in to third-party billing or to lift an existing opt-out selection, like a customer's decision to lift a PIC freeze, constitutes customer proprietary network information (CPNI), and that the LEC receiving such information is prohibited from using or disclosing such information for winback purposes.

Given the lack of any real need for opt-in or opt-out options in the case of third-party-billing for presubscribed 1+ interexchange services, it is likely, in PLD's view, that imposing or requiring the offering of such options would unduly burden consumers and the


competitive marketplace, even with the foregoing types of safeguards in place. However, without such safeguards, the interests of consumer choice in the selection of interexchange carriers and the interests in fair competition would most certainly be jeopardized.

CONCLUSION

For the reasons expressed above, PLD urges the Commission not only to reject proposals to require LECs to offer third-party-billing blocking options for presubscribed 1+ interexchange services, but to prohibit LECs from offering such options. The availability of PIC freezes, strict verification requirements, and truth-in-billing rules are sufficient to provide consumers with protection from unauthorized changes in service providers. Allowing LECs the ability to offer third-party-billing opt-in or opt-out elections is not necessary to protect consumer interests and could unduly interfere with consumers' carrier selections and invite anti-competitive abuse.

Respectfully submitted October 24, 2011.

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